

Notice of Allowability

Application No.

09/879,343

Examiner

Dennis Rosario

Applicant(s)

GALLAGHER ET AL.

Art Unit

2621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amt. 9/6/2005.
2. ☒ The allowed claim(s) is/are 1,3-5,9,10,13-15,17-21,28,29 and 41-53.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 6/12/2001
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

JOSEPH MANCUSO
SUPERVISORY PATENT EXAMINER

DETAILED ACTION

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert Luke Walker, Registration No. 30,700 on 12/02/2005.

The application has been amended as follows:

Claim 1, last line insert --wherein the step of generating a noise metric includes the step of using the peak value of the noise table to obtain the noise metric--.

Cancel claim 12.

Claim 41 last line insert --wherein the step of generating a noise metric includes the step of using the peak value of the noise table to obtain the noise metric--.

Claim 53 last line insert --wherein the step of generating a noise metric includes the step of using the peak value of the noise table to obtain the noise metric--.

Response to Amendment

2. The amendment was received on September 6, 2005. Claims 1,3-5,9,10,13-15,17-21,28,29 and 41-53 are pending.

Response to Arguments

3. Applicant's arguments, see remarks, pages 16 and 17, filed 9/6/2005, with respect to claim 12 have been fully considered and are persuasive. The rejection of claim 1 as amended by examiner's amendment and respective dependent claims 3-5,9,10,13-15,17-21,28,29 has been withdrawn since the limitation of claim 12 is included in claim 1.

Allowable Subject Matter

4. Claims 1,3-5,9,10,13-15,17-21,28,29 and 41-53 are allowed.

Regarding claims 1,41 and 53 as amended by examiner's amendment, applicants properly point out, stating on page 17, lines 8,9, "Burns does not teach or suggest use of the peak value or 'high noise' as a metric."

Hence, and in view of applicants arguments, amendment and in combination with all of the other elements of the claim, claims 1,41 and 53 is allowable over the closest prior art of Burns et al.

Thus, respective dependent claims 3-5,9,10,13-15,17-21,28,29 and 41-53 are allowable.

Claims 13,15 and 49 are allowable for the same reasons for allowance of the office action of 5/6/2005.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Rosario whose telephone number is (571) 272-7397. The examiner can normally be reached on 6-3.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Mancuso can be reached on (571) 272-7695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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